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May 11th, 2023

To: Hon. Pamela K. Chen
United States District Judge
225 Cadman Plaza East
Brooklyn, NY 11201
via ECF

Re: Second Pre-Motion Conference Request, Case No. 22-CV-4677-PKC-MMH,
Diaspora v. Columbus Ale House Inc et al.

Dear Judge Chen,

I represent Defendants in the above-captioned action. I write today to request a pre-motion conference in compliance with the Court's Individual Practices & Rules, § 3(A). Defendants intend to move to dismiss the First Amended Complaint under Fed. R. Civ. P. 12(b)(2) and (5) based on failure to effect service. This is the second such request Defendants have made to the Court. The identical objections to the first attempt at service are raised here because the exact same defective process was used by the Plaintiffs.

Once again, the person upon whom service was attempted was a person employed as a bartender and who is not a manager, officer, director, or owner. This employee is not

a general agent. She cannot properly accept service on behalf of the Corporate Defendant. Video showing the attempted service of process makes clear that the employee did not represent herself as having this authority and that there was no reason for the process server to think that she did. Defendants did not follow the dictates of Fed. R. Civ. P. 4. (h), service of a corporate defendant.

Defendants also challenged the service to the Individual Defendant. On the affidavit of service for the Individual Defendant, it states that the individual who was served was asked whether the Defendant is in active military service. In truth, no question about military service was asked. Honesty with the Court in affidavits sworn under penalty is no minor detail. A party should not be allowed to benefit from sloppy service covered up with dishonesty no matter how trivial they may think the substantive issue is.

Since its inception on August 9, 2022, this lawsuit has consisted of a string of delays and procedural missteps. The five months following the initial filing consisted of repeated warnings by the Court that failure to effect service would result in dismissal, repeated extensions, and a warning that no further extension would be granted. On January 27th, 2023, the Plaintiff filed an affidavit of service for the Corporate Defendant and for the Individual Defendant representing service as effected on January 17th, 2023. The Defendants raised the issue of improper service to the Court in a letter for pre-motion conference on February 15th, 2023. The Court subsequently directed the Plaintiff to serve an amended summons in accordance with Fed. R. Civ. P. 4. A second attempt at service

was made 20 days after the Plaintiff was directed by the Court. We now find ourselves in the exact same position as when the initial request for pre-motion conference was filed. Plaintiff took the exact same actions that were taken in the January defective service.

Defendants have a right to due process when being accused of wrongdoing. The Plaintiff's repeated inability to properly follow procedure seriously calls into question her and her counsel's ability to follow process over the course of a lawsuit in a way that would respect the rights of the Defendants. Instead, it foretells unnecessary uncertainty, expense, and time. This wastes the resources of the Defendants and the Court. The standing Rule 11 Motion further illustrates misgivings about whether this is a proper suit. Defendants also highlight the complexity of a class action suit and call into question whether the Plaintiff and her counsel are proper representatives of the proposed class.

Dated: Brooklyn, NY

May 11th, 2023

Respectfully submitted,

/s/Leah Farrell
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